ESTTA Tracking number:

ESTTA565951

Filing date:

10/21/2013

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209617
Party	Defendant Bram Warren, Company
Correspondence Address	BRAM WARREN,COMPANY 18100 SW 50TH ST SOUTHWEST RANCHES, FL 33331-1012 UNITED STATES bramwarren@bramwarren.com
Submission	Motion to Join/Substitute Party
Filer's Name	Debra Wiseberg
Filer's e-mail	bramwarren@bramwarren.com
Signature	/Debra Wiseberg/
Date	10/21/2013
Attachments	MotionforSubstitutionofPartyandBrief.pdf(970063 bytes) ExhibitA.pdf(476039 bytes) ExhibitB.pdf(579824 bytes) ExhibitC.pdf(657418 bytes) ExhibitD.pdf(418010 bytes)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Xikar, Inc.,

Opposer,

v.

Bram Warren Company,

Applicant.

#### MOTION FOR SUBSTITUTION OF PARTY

COMES NOW, Bram Warren Company, a Florida corporation, Applicant and Counterclaim Plaintiff, in this action and shows the court that Bram Warren Company, a Florida corporation has transferred their interest in the mark "Cicar", and the goodwill of the business symbolized by said mark, along with the trademark application for registration to Debra Wiseberg on October 11, 2013. The Assignment of Trademark for the mark "Cicar" was filed for recording with the Assignment Services Division of the United States Patent and Trademark Office on October 14, 2013. Bram Warren Company, a Florida corporation was dissolved on October 14, 2013 after it transferred business operations to Debra Wiseberg doing business as Bram Warren Company.

It is therefore requested, pursuant to TBMP § 512.01, that the Trademark Trial and Appeal Board enter an order that Debra Wiseberg, as Assignee and Successor in Interest to the mark "Cicar", be substituted in this action as "Applicant and Counterclaim Plaintiff" in the place of Bram Warren Company, a Florida corporation. The Brief in Support of the Motion for

Xikar, Inc. v. Bram Warren Company Opposition No. 91209617 Serial No. 85/652496

Substitution of Party and Exhibits are attached hereto.

Respectfully submitted,

Dated: October 21, 2013

By:

Debra Wiseberg, Vice President of

Bram Warren Company, a dissolved Florida corporation, on behalf of said corporation.

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329

Email: bramwarren@bramwarren.com

#### CERTIFICATE OF FILING

I hereby certify that the Motion for Substitution of Party, Brief in Support of Motion for Substitution of Party and Exhibits were filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board by ESTTA on October 21, 2013.

Bv.

Debra Wiseberg

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for Substitution of Party, Brief in Support of Motion for Substitution of Party and Exhibits were sent to the counsel for the Opposer by the United States Postal Service, first class mail on October 21, 2013 to the following address:

Ginnie C. Derusseau Erickson, Kernell, Derusseau & Kleypas LLC 8900 State Line Road, Suite 500 Leawood, KS 66206

By:

Debra Wiseberg

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Xikar, Inc.,

Opposer,

V.

Bram Warren Company,

Applicant.

# BRIEF IN SUPPORT OF MOTION FOR SUBSITITUTION OF PARTY

#### STATEMENT OF FACTS

Bram Warren Company, a Florida corporation, Applicant and Counterclaim Plaintiff, has transferred their interest in the mark "Cicar" and the goodwill of the business symbolized by said mark, along with the trademark application for registration of said mark to Debra Wiseberg on October 11, 2013. The Assignment of the mark "Cicar", serial no. 85/652496 was filed for recording with the Assignment Services Division of the United States Patent and Trademark Office on October 14, 2013 (a copy of the filing coversheet and the Assignment of Trademark are attached as Exhibit "A").

Bram Warren Company, a Florida corporation was dissolved on October 14, 2013 after it transferred business operations to Debra Wiseberg doing business as Bram Warren Company.

Articles of Dissolution were filed with the Secretary of the State of Florida to dissolve Bram

Warren Company, a Florida corporation on October 14, 2013 (a printout from Florida Department of State Division of Corporations showing the current status of the corporation and a certified copy of the Articles of Dissolution are attached as Exhibit "B").

#### ARGUMENT

The mark "Cicar" was assigned to Debra Wiseberg in accordance with Trademark Act § 10, 15 U.S.C. § 1060. As assignee to the mark "Cicar", Debra Wiseberg will be doing business as Bram Warren Company and she has retained ongoing business operations, logos, and trademarks of the now dissolved Florida corporation, without any disruption in such business operations (a printout from Florida Department of State Division of Corporations showing the Status of the Fictitious Name; a certified copy of the Fictitious Name filing; and Affidavit of Publication for the Fictitious Name are attached as Exhibit "C"; pages from the Bram Warren Company website showing the ongoing use of the mark "Cicar" in commerce are attached as Exhibit "D").

Discovery commenced on July 15, 2013 and Initial Disclosures have been exchanged between the parties. The Applicant's First Set of Interrogatories were sent to the Opposer's new counsel on September 27, 2013. As of this date no other discovery requests have been exchanged between the parties.

All relevant facts and allegations stated in the Applicant's Answer to the Notice of Opposition, Affirmative Defenses, and Counterclaims remain the same. Discovery along with any and all information needed from the original Applicant and Counterclaim Plaintiff, Bram Warren Company, a Florida corporation can be obtained from Debra Wiseberg, Assignee of the mark "Cicar". Debra Wiseberg is also Vice President and Director of Bram Warren Company, a dissolved Florida corporation and has the authority to handle all business associated with the winding down and dissolution of said corporation.

The only other person with any direct knowledge of Bram Warren Company, a Florida corporation is "Bram Warren" Wiseberg. Bram Warren remains the artist of the products previously sold by Bram Warren Company, a Florida corporation and currently sold by Debra Wiseberg doing business as Bram Warren Company, the Assignee and Successor in Interest to the mark "Cicar". Information regarding Mr. Wiseberg's knowledge in this matter, potential as a witness, and his contact information were disclosed in the Applicant's Initial Disclosures sent to the Opposer's counsel on August 14, 2013.

#### CONCLUSION AND REQUEST

Pursuant to TBMP § 512.01 and because there will be no loss or interruption as to the obtainable information needed or required by the Opposer and Counterclaim Defendant, Xikar, Inc., a Kansas corporation from the original Applicant and Counterclaim Plaintiff, Bram Warren Company, a Florida corporation. We respectfully request that Debra Wiseberg, as Assignee and Successor in Interest to the mark "Cicar" be substituted as party for Bram Warren Company, a Florida corporation, "Applicant and Counterclaim Plaintiff" in this Opposition proceeding.

If it is decided that a substitution of party is not proper at this time then we respectfully request that Debra Wiseberg be joined as a party in this proceeding, being the Assignee and Successor in Interest to the mark "Cicar", Serial No. 85/652496.

Dated: October 21, 2013

Respectfully submitted,

BY:

Debra Wiseberg, Vice President of

Bram Warren Company, a dissolved Florida corporation, on behalf of said corporation.

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329

Email: bramwarren@bramwarren.com

Xikar, Inc. v. Bram Warren Company Opposition No. 91209617 Serial No. 85/652496

#### CERTIFICATE OF FILING

I hereby certify that the Motion for Substitution of Party, Brief in Support of Motion for Substitution of Party and Exhibits were filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board by ESTTA on October 21, 2013.

By: Sche Wind

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for Substitution of Party, Brief in Support of Motion for Substitution of Party and Exhibits were sent to the counsel for the Opposer by the United States Postal Service, first class mail on October 21, 2013 to the following address:

> Ginnie C. Derusseau Erickson, Kernell, Derusseau & Kleypas LLC 8900 State Line Road, Suite 500 Leawood, KS 66206

#### EXHIBIT "A"

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Xikar, Inc. v. Bram Warren Company

Assignment

Page 1 of 2

#### TRADEMARK ASSIGNMENT

Electronic Version v1.1 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

#### CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Bram Warren Company, a Florida corporation		10/11/2013	CORPORATION:

#### RECEIVING PARTY DATA

Name:	Debra Wiseberg		
Doing Business As:	Bram Warren Company		
Street Address:	18100 S.W. 50 Street		
City:	Southwest Ranches		
State/Country:	FLORIDA		
Postal Code:	33331		
Entity Type:	INDIVIDUAL: UNITED STATES		

#### PROPERTY NUMBERS Total: 1

<b>Property Type</b>	Number	Word Mark
Serial Number:	85652496	CICAR

#### CORRESPONDENCE DATA

Fax Number:

Phone:

954-297-0329

Email:

bramwarren@bramwarren.com

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will

be sent via US Mail.

Correspondent Name: Debra Wiseberg

Address Line 1:

18100 S.W. 50 Street

Address Line 4:

Southwest Ranches, FLORIDA 33331

NAME OF SUBMITTER:	Debra Wiseberg	
Signature:	/Debra Wiseberg/	

Opposition No. 91209617 Serial No. 85/652496

#### EXHIBIT "A"

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Xikar, Inc. v. Bram Warren Company

Assignment

Page 2 of 2

Date:	10/14/2013			
Total Attachments: 1 source=AssignmentofT	rademark#page1.tif			
RECEIPT INFORMATIO	N			
ETAS ID:	TM283381			
Receipt Date:	10/14/2013			
Fee Amount:	\$40			

#### **EXHIBIT "A"**

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff Xikar, Inc. v. Bram Warren Company

# TRADEMARK

This agreement entered this 11<sup>th</sup> of October, 2013 between Bram Warren Company, a Florida corporation, whose address is 18100 S.W. 50 Street, Southwest Ranches, Florida 33331, herein referred to as "Assignor", and Debra Wiseberg, whose address is 18100 S.W. 50 Street, Southwest Ranches, Florida 33331, herein referred to as "Assignee".

That Assignor has adopted and is using the mark "Cicar" whose trademark application serial number is 85/652496 filed in the United States Patent and Trademark Office and Assignee is desirous of acquiring such mark and the trademark application for registration of such mark thereof.

That for consideration, the receipt of which is acknowledged, Assignor does hereby assign to Assignee all rights, title, and interest in and to said mark, the goodwill of the business symbolized by said mark (such business is ongoing, without any interruption to continuous use of the mark "Cicar"), along with the trademark application for registration thereof, the serial number of which is contained herein.

Dated: October 11, 2013

Debra Wiseberg, Vice President of and signatory for Bram Warren Company, a Florida corporation

Assignor

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329

Email: bramwarren@bramwarren.com

Debra Wiseberg
Assignee

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329

Email: bramwarren@bramwarren.com

#### EXHIBIT "B"

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff
Xikar, Inc. v. Bram Warren Company

## FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS



#### **Detail by Entity Name**

#### Florida Profit Corporation

**BRAM WARREN COMPANY** 

#### **Filing Information**

**Document Number** 

P11000038042

**FEI/EIN Number** 

383839552

**Date Filed** 

04/19/2011

State

FL

Status

INACTIVE

Last Event

**VOLUNTARY DISSOLUTION** 

and making and Inquiry/Carnaration Sagrah/Sagrah Darult Datail/Entity Nama/dam

**Event Date Filed** 

10/14/2013

**Event Effective Date** 

10/14/2013

#### **Principal Address**

18100 SW 50 STREET

SOUTHWEST RANCHES, FL 33331

#### **Mailing Address**

18100 SW 50 STREET

SOUTHWEST RANCHES, FL 33331

#### Registered Agent Name & Address

WISEBERG, DEBRA 18100 SW 50 STREET

SOUTHWEST RANCHES, FL 33331

#### Officer/Director Detail

#### Name & Address

Title PD

WISEBERG, BRAM W 18100 SW 50 STREET

SOUTHWEST RANCHES, FL 33331

Title VD

WISEBERG, DEBRA

18100 SW 50 STREET

SOUTHWEST RANCHES, FL 33331

#### **Annual Reports**

Detail by Entity Name

EXHIBIT "B"

Opposition No. 91209617 Page 2 of 2 Serial No. 85/652496

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Report Year

Xikar, Inc. v. Bram Warren Company **Filed Date** 

2012

04/22/2012

2013

04/23/2013

**Document Images** 

10/14/2013 -- VOLUNTARY DISSOLUTION

View image in PDF format

04/23/2013 - ANNUAL REPORT

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04/22/2012 -- ANNUAL REPORT

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04/19/2011 -- Domestic Profit

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State of Florida, Department of State

# State of Florida Department of State

I certify that the attached is a true and correct copy of the Articles of Dissolution, filed on October 14, 2013, effective October 14, 2013, dissolving BRAM WARREN COMPANY, a Florida corporation, as shown by the records of this office.

The document number of this corporation is P11000038042.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Fifteenth day of October, 2013

Cen Define Secretary of State



#### EXHIBIT "B"

Opposition No. 91209617 Serial No. 85/652496

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Xikar, Inc. v. Bram Warren Company

FILED Oct 14, 2013 Secretary of State

#### ARTICLES OF DISSOLUTION

Pursuant to section 607.1403, Florida Statutes, this Florida corporation submits the following Articles of Dissolution:

FIRST:

The name of the corporation as currently filed with the Florida Department of State:

**BRAM WARREN COMPANY** 

SECOND:

The document number of the corporation: P11000038042

THIRD:

The date dissolution was authorized: September 27, 2013

Effective date of dissolution: October 14, 2013

FOURTH:

Dissolution was approved by the shareholders. The number of votes cast for dissolution

was sufficient for approval.

I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in section 817.155, Florida Statutes.

Signature: DEBRA WISEBERG

VICE PRESIDENT

Electronic Signature of Signing Officer, Director, Incorporator or Authorized Representative

Contact Us

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Xikar, Inc. v. Bram Warren Company

## FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS



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#### **Fictitious Name Detail**

#### **Fictitious Name**

**BRAM WARREN COMPANY** 

#### Filing Information

Registration Number G13000100444

Status

ACTIVE

Filed Date

10/10/2013

**Expiration Date** 

12/31/2018

Current Owners

4

County

BROWARD

**Total Pages** 

1

Events Filed

NONE

**FEI/EIN Number** 

NONE

#### **Mailing Address**

18100 S.W. 50 STEET

SOUTHWEST RANCHES, FL 33331

#### Owner Information

WISEBERG, DEBRA

18100 S.W. 50 STREET

SOUTHWEST RANCHES, FL 33331

FEI/EIN Number: NONE Document Number: NONE

#### **Document Images**

10/10/2013 - Fictitious Name Filing

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No Filing History

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| State of Florida, Department of State

# State of Florida Department of State

I certify that the attached is a true and correct copy of the Application For Registration of the Fictitious Name BRAM WARREN COMPANY, registered with the Department of State on October 10, 2013, as shown by the records of this office.

The Registration Number of this Fictitious Name is G13000100444.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Eleventh day of October, 2013

Secretary of State



#### **EXHIBIT "C"**

Opposition No. 91209617 Serial No. 85/652496

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff Xikar, Inc. v. Bram Warren Company

#### APPLICATION FOR REGISTRATION OF FICTITIOUS NAME

REGISTRATION# G13000100444

Fictitious Name to be Registered: BRAM WARREN COMPANY

Mailing Address of Business:

18100 S.W. 50 STEET

SOUTHWEST RANCHES, FL 33331

Florida County of Principal Place of Business: BROWARD

**FEI Number:** 

Oct 10, 2013 Secretary of State

Owner(s) of Fictitious Name:

WISEBERG, DEBRA 18100 S.W. 50 STREET SOUTHWEST RANCHES, FL 33331 US

I the undersigned, being an owner in the above fictitious name, certify that the information indicated on this form is true and accurate. I further certify that the fictitious name to be registered has been advertised at least once in a newspaper as defined in Chapter 50, Florida Statutes, in the county where the principal place of business is located. I understand that the electronic signature below shall have the same legal effect as if made under oath and I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s. 817.155, Florida Statutes.

**DEBRA WISEBERG** 

10/10/2013

Electronic Signature(s)

Date

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff
Xikar, Inc. v. Bram Warren Company

#### **BROWARD DAILY BUSINESS REVIEW**

Published Daily except Saturday, Sunday and Legal Holidays Ft. Lauderdale. Broward County, Florida

STATE OF FLORIDA COUNTY OF BROWARD:

Before the undersigned authority personally appeared B. COOPER, who on oath says that he or she is the LEGALS CLERK, of the Broward Daily Business Review f/k/a Broward Review, a newspaper published at Fort Lauderdale, in Broward County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

NOTICE UNDER FICTITIOUS NAME LAW BRAM WARREN COMPANY

in the XXXX Court, was published in said newspaper in the issues of

10/08/2013

Affiant further says that the said Broward Daily Business Review is a newspaper published at Fort Lauderdale, in said Broward County, Florida and that the said newspaper has heretofore been continuously published in said Broward County, Florida and has been entered as second class mail matter at the post office in Fort Lauderdale in said Broward County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

08 day of OCTOBER

, A.D. 2013

(SEAL)

B. COOPER personally known to me

NOTICE UNDER FICTITIOUS NAME LAW

NOTICE IS HEREBY GIVEN that the undersigned, desiring to engage in business under the fictitious name of

BRAM WARREN COMPANY located at 18100 SW 50 Street,

Southwest Ranches, FL 33331, in the City of

Southwest Ranches, Broward County, Florida 33331 intends to register the said name with the Division of Corporations of the Department of State, Tallahassee, Florida.

Dated at Southwest Ranches, Florida, this 27 day of September, 2013.

Debra Wiseberg

10/8 13-2FN-169/2161030B

cigar ashtrays - Bram Warren Cigar Ashtray Collection - mens gifts Opposition No. 91209617 Page 1 of 2

EXHIBIT "D" Serial No. 85/652496

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Bram Warren Charles Clear Cinder Order Form

#### Home

Bram Warren cigar ashtray collection represents artistic functional design. Five cigar ashtray styles are featured in an array of cutting edge colors and unique finishes to reflect individual choice and taste. Crafted from a foundation of generous proportion and timeless design to create the perfect balance of form and function. Each cigar ashtray is a handmade original manufactured with the finest quality ceramic materials and signed by the artist, Bram Warren.



### ASHTRAY COLLECTION

- Colloquy Striker<sup>™</sup> (9"Lx 9"W x 2.5H) Featuring four large cigar grooves and an oversized ash
  well that can accommodate the largest ring gauge cigars. The Colloquy <sup>™</sup> has an innovative
  removable match caddy with a speciality strike surface, so there is always a light close by.
- Coterie<sup>TM</sup> (9.5"Diam.) Low profile by design, the ashtray features three large cigar grooves and a
  wide ash well to ensure the most enjoyable smoking experience.
- Chamber<sup>TM</sup> (7.5" L x 4.5" W x 2"H) This ashtray features a long clgar groove and a deep ash well, perfect for an uninterrupted cigar break. Custom real gold or platinum monograms are available in select colors.
- Cicar™ (6.75").x4"W) Inspired by the "cigar leaf" the Cicar™ is a hand sculpted car cigar ashtray
  that will add pleasure and elegance to any drive. Featuring a deep ash well and generous cigar
  groove. Simply place in the vehicle's beverage holder and enjoy. A custom storage bag is included for
  added convenience.
- Cinder™ (3\*Diam.) Designed exclusively for cigarillos and cigarettes, the Cinder™ is a wonderful companion to morning coffee and a newspaper.



All products manufactured in the U.S.A. Logo and product names are trademarks of Bram Warren Company, a Florida based business. Content copyright 2013. Bram Warren Company. All rights reserved.

Opposition No. 91209617

EXHIBIT "D" Serial No. 85/652496

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Xikar, Inc. v. Bram Warren Company

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff

Bram Warrenstown

Xikar, Inc. v. Bram Warren Company, Clear Cinder Order Form

Cicar

Fits in the vehicle's beverage holder

(954)297-0329

{Customer Service & Sales}

\$105.00 USD

e shipping within the continental U.S.A.) (orders shipped within 1-3 weeks)



Car Cigar Ashtray



Car Cigar Ashtray



Car Cigar Ashtray



Car Cigar Ashtray



Green Dragon or ashtray to enlarge) Car Cigar Ashtray



over cigar ashtray to cularge) Car Cigar Ashtray



sslitmy to enlarge) Car Cigar Ashtray



er eigar aubtray to enlarge) Car Cigar Ashtray



over eigar ashtray to cularge} Car Cigar Ashtray



Cicar Car Cigar Ashtray by Bram Warren - vehicle cigar ashtrays Opposition No. 91209617 Serial No. 85/652496 EXHIBIT "D"

Page 2 of 2

Submitted by Bram Warren Company, Applicant and Counterclaim Plaintiff Xikar, Inc. v. Bram Warren Company

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Logo and product names are fundamarks of Bram Warren Company, a Florida based business.
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